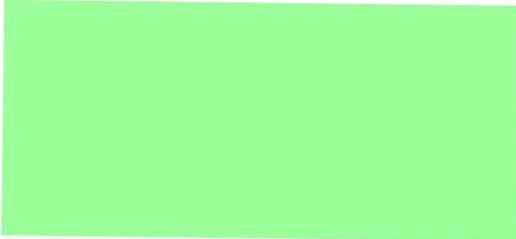




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAR 24 2014** OFFICE: TEXAS SERVICE CENTER



IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

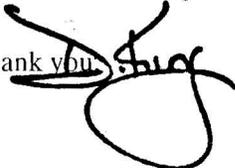
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you 

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks “to be a guardian or adviser for young Korean students” and to teach the Korean language. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director found that the petitioner qualifies as a member of the professions holding an advanced degree. The director’s only stated ground for denial is that the petitioner had not established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, Pub.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*In re New York State Dep’t of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on March 25, 2013. An accompanying statement from the petitioner reads, in part:

#### My Plan in USA

First of all, I’d like to be a guardian or adviser for young Korean students who like to study in USA.

I've taught English here in Korea for more than 10 years, about 6 years for young students. I know a lot of young students and their parents who are interested in studying in USA. However, they found it difficult to pursue the education abroad because they are young and unfamiliar with your country. . . . I've already earned a master degree in USA so I can provide the advice and information about studying overseas for them when they need it. . . .

Second of all, I'd like to teach Korean, if possible, in America. I have a certificate for teaching Korean. I've heard that your country is now short of teachers who are qualified for teaching Korean. I believe I can be a good Korean language teacher because of my teaching experiences.

Lastly, I have a lot of relatives and friends in USA. They all will help me purchase a house and live a stable life in your country.

A résumé submitted with the petition include the following information:

Education: Jan. 2, 2013  
On-line Training Program for Korean Language Teachers

Jun. 12, 1999

Feb. 1987

Experience: from 2007 to present

From Sep. 2000 to Dec. 2004

From 1987 to 1991

The résumé does not show that the petitioner has any past employment experience as a Korean language teacher or as "a guardian or adviser for young Korean students." The petitioner received her certification as a Korean language teacher less than three months before she filed the petition.

The director issued a request for evidence on July 11, 2013. The director instructed the petitioner to “submit evidence that the beneficiary’s contributions will impart national-level benefits” and “evidence to establish that the beneficiary’s past record justifies projections of future benefit to the nation.”

In response, the petitioner stated:

I’m intended to be a Korean language teacher but it’s not geographically limited but national-level. . . . I know a lot of people from different ethnic groups are interested in learning Korean for various reasons and the number of people is increasing.

. . . I hope the national interest would be served by my inviting young Korean students to the USA for their study. I’d like to persuade parents and students in Korea to choose USA for foreign study instead of other English-spoken [*sic*] countries such as England, Canada, and Australia. Some of the parents have been consulting with me about their children’s studying abroad. I believe they’ll make an easier decision to choose America for their study if I’m there because most of them are young students. . . . Would-be students who like to choose USA will contribute to American economy, international exchange, and positive understandings between the two countries. Eventually, I think the national interest would be served if I could play a role as a guardian.

You asked for my past record which justifies projections of future benefit to the nation. My record is about being a teacher and running a language institute. I have built trust and relationship[s] with parents and student, which is hard to submit . . . in any document forms [*sic*]. The competition in private education is tough in Korea and some couldn’t last a year. I have been in the business for more than 10 years. Some of my students have started their study abroad. I’m sure many of my students will pursue the study in English-spoken [*sic*] countries. I hope I can provide for my students the information and help necessary for school admissions, their accommodations, and so on. I guess those jobs take quite a time so I’m not able to work immediately in America.

If you don’t think I’m qualified this time, I’d like to try to apply one more time by buying a house [for] more than \$500,000 in America, which I heard from the news. The news says you offer a green card to those who buy a house [for] more than a half million dollars.

Please let me know how and the procedure.

There is no existing procedure through which the petitioner can attain permanent resident status by buying a house. Two U.S. senators introduced S. 1746, the “Visa Improvements to Stimulate

International Tourism to the United States of America Act” (VISIT USA Act) on October 20, 2011. If enacted, section 8 of the VISIT USA Act would have granted renewable nonimmigrant status to foreign investors who purchased at least \$500,000 worth of U.S. residential property and met certain related conditions. The VISIT USA Act would not have granted permanent resident status to those investors, and nonimmigrant status attained in this way would not have authorized employment in the United States. The bill did not become law.

The petitioner did not submit any documentation in response to the request for evidence except for bank and tax documents intended to establish her net worth. The petitioner submitted no evidence regarding her claimed past work as a language teacher.

The director denied the petition on October 3, 2013, stating that the petitioner had established the intrinsic merit of her intended future work, but “has not demonstrated that she has any prospective students from various geographical areas around the United States.” The director concluded: “the petitioner has not established that [her proposed employment] . . . would be national in scope.”

The director also found that the petitioner had not submitted any evidence to address the third prong of the *NYS DOT* national interest test, regarding her influence on her field as a whole. The director noted that the petitioner had referred to a shortage of Korean language teachers, but the director stated “the labor certification process is already in place to address such shortages.” This language derives from *NYS DOT* at 218.

To qualify for the waiver, it is not sufficient for the petitioner to show that she intends to teach Korean language, or that she possesses the qualifications of a Korean language teacher. Korean language teachers are generally subject to the job offer requirement at section 203(b)(2)(A) of the Act. The petitioner must establish a record of influence on the field as a whole that would distinguish her from others in her field. The petitioner has not established or claimed such a record. The petitioner obtained certification as a Korean language teacher shortly before she filed the petition, but she has not established any past experience as a Korean language teacher. On appeal, the petitioner places little emphasis on this teaching work, stating: “I thought I could be a Korean language teacher someday in the future. However, my top priority to immigrate is to help my young Korean students to study in the USA.”

The petitioner states: “I believe inviting my young students to the USA for their study is national in scope because they [could] choose any school across the USA. Moreover, they contribute to the U.S. economy, which serves [the] national interest.” The petitioner has not submitted any documentary evidence to show that her past activities of this sort have affected the U.S. economy at a national level, or significantly increased the number of Korean students studying in the United States. Therefore, the petitioner’s general assertions about possible benefits that may result from her future efforts amount to unsupported speculation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*,

14 I&N Dec. 190 (Reg'l Comm'r 1972)). The petitioner has not established any past record of impact or influence in this area, to justify projections of future benefit.

The petitioner bears the burden of proof to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). In this proceeding, the petitioner has submitted no evidence about her past work in the areas through which she claims eligibility for the national interest waiver; she has only documented her academic degrees and her financial status.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYS DOT* at 217, n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”).

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

Review of the record shows another evident basis for denial of the petition. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(k)(3)(i)(A) states that, to show that the alien is a professional holding an advanced degree, the petition must include an official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree. In the denial notice, the director concluded that the petitioner qualifies for classification as a member of the professions holding an advanced degree, based on her Master of Arts degree in Teaching English to Speakers of Other Languages.

The petitioner, however, does not seek employment as an English teacher. The degree or major must be academically appropriate to the profession for which petitioned. *Matter of Katigbak*, 14 I&N Dec. 46. Here, the petitioner has not established that she holds an advanced degree in teaching Korean. She has documented only that she completed an “On-Line Training Program for

Korean Language Teachers,” with no evidence that this certificate is equivalent to a United States advanced degree.

Furthermore, for most of the proceeding, the petitioner has indicated that teaching Korean language is a secondary concern, and that her primary goal is to encourage Korean students to study in the United States, and to assist them in various ways during their studies.

USCIS regulations define a “profession” as “one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.” 8 C.F.R. § 204.5(k)(2). The petitioner submitted no evidence to establish that being “a guardian or adviser for young Korean students” qualifies as a profession, or even as an occupation. The petitioner has not shown, for instance, that anyone now receives compensation for such activities, or that she has tentative agreements with clients who will compensate her for this work in the future. Therefore, the petitioner has not demonstrated or explained how these intended efforts would qualify her for an employment-based immigrant classification.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.